IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11129 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KAUSHIKBHAI JASHBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for MR DHARMENDRA PARIKH for Petitioner

MR UR BHATT, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 07/12/2000

ORAL JUDGEMENT

1. The petitioner has filed this petition under Article 226 of the Constitution challenging his detention order passed by the Police Commissioner, Vadodara City, on 20th June, 2000 in exercise of powers conferred upon

him under Sec.3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA for short) and the petitioner came to be detained from 21st June, 2000.

2. In the grounds, which is placed on record, the detaining authority has relied on the crime registered against the petitioner before the Makarpura Police Station on 27th March, 2000 under Section 66 (B) 65 (A) (E) and 81 of the Bombay Prohibition Act. Taking into account the investigation in the crime, the detaining authority came to the conclusion that the petitioner was dealing in illegal liquor and was selling the same. The petitioner was hardened criminal and headstrong person and was using force and coercive measures in his aforesaid illegal activities of selling liquor. The detaining authority also placed reliance on three witnesses, who on assurance of anonymity offered statements before the concerned authority to the extent that the petitioner was indulged in illegal activity. From the above material, the detaining authority came to the conclusion that the petitioner was a " a "bootlegger" within the meaning of Section 2(b) of the PASA Act and was obstruction to public peace and public health. Therefore, as a last resort, according to the detaining authority, the detention order was passed against the petitioner.

3. Learned Advocate Mr.H.R. Prajapati for the petitioner and learned AGP Mr. Udai Bhatt for the respondents were heard at length.

4. The detention order, inter alia, was vehemently challenged on the ground that the same being vitiated by non-application of mind by the detaining authority in not considering the less drastic remedy. From the rival contentions and from the records of the case, it clearly appears that the detaining authority referred in the grounds that the petitioner though was on bail but the proceedings for the cancellation of bail was likely to consume more time, the order of detention under the PASA Act was passed.

5. In ZUBEDABIBI RASIDKHAN PATHAN vs.STATE OF GUJARAT, reported in 1995 (2) GLR 1134, the Division Bench of this Court observed that the detaining authority failed to consider less drastic remedy of cancellation of bail available to him and, therefore, in that case the order of detention was held vitiated on the ground of non-application of mind by the detaining authority as to less drastic remedy available to detaining authority. This view was again fortified by the Division Bench of

this Court in Letters Patent Appeal No. 1056 of 1999, in the case of YUNUSBHAI HASANBHAI CHANCHI vs. DISTRICT MAGISTRATE, decided on 15th of September.

6. Factual aspect of the case reveals that the crime was registered against the petitioner on 27th March, 2000. The petitioner was released on bail from 29th March, 2000. Thereafter on 1st of June, 2000, the statements of witnesses were recorded and order came to be passed on 20th June, 2000. If we consider the 1st of June, 2000, to be the date on which the illegal activity of the petitioner came to the light, then also, there was sufficient time for the detaining authority to resort to the less drastic remedy of cancellation of bail. But without resorting even to the remedy, the detaining authority has simply brushed aside this aspect by merely saying that the proceedings for cancellation of bail was likely to consume more time. The non-application of mind by the detaining authority qua this aspect of the case is obvious, and therefore, the order of detention is vitiated and required to be set aside.

8. In view of the above discussion, this petition is allowed. The order passed by the Police Commissioner, Vadodara City on 20th June, 2000 against the petitioner under the PASA Act is hereby ordered to be quashed and set aside. Petitioner - Kaushikbhai Jashbhai Patel is ordered to be set at liberty forthwith if he is not required to be detained for any other purpose. Rule made absolute. DS permitted.

(J.R. Vora, J.)

p.n.nair